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| APPLICATION NO.                           | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/620,831                                | 07/16/2003  | Darren Eby           | ASC01 P-104A        | 1261             |
| 28101                                     | 7590        | 04/22/2005           | EXAMINER            |                  |
| VAN DYKE, GARDNER, LINN AND BURKHART, LLP |             |                      | BRYANT, DAVID P     |                  |
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| P.O. BOX 888695                           |             |                      | ART UNIT            |                  |
| GRAND RAPIDS, MI 49588-8695               |             |                      | PAPER NUMBER        |                  |
|   |             |                      | 3726                |                  |

DATE MAILED: 04/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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**Office Action Summary**

Application No.

10/620,831

Applicant(s)

EBY, DARREN

Examiner

David P. Bryant

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) 1-4 and 11-17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 5-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☒ Interview Summary (PTO-413)  
Paper No(s)/Mail Date 041305.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

### **DETAILED ACTION**

This action is supplemental to the Office action mailed March 25, 2005. The difference between the original action and the present action is the new § 102(e) rejection using the Marshall et al. reference (U.S. Patent No. 6,843,468).

#### ***Election/Restrictions***

Applicant's election of Group II (claims 5-10) in the reply filed on January 6, 2005, is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

**Claims 1-4 and 11-17 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim.**

#### ***Interference***

It is noted that applicant has attempted to provoke an interference with allowed application 10/283,533. Once the present application includes an allowable claim, the two applications will be considered for a possible interference.

#### ***Drawings***

The drawings are objected to because of the following:

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(1) In Figure 3, the U-shaped receiving portion on the left side (rather than the right side) should be labeled with the reference character **22b**, in accordance with Figure 1 and the specification on page 3, lines 26-30.

(2) Also in Figure 3, a floor portion for the bracket should apparently be depicted at a position below receiving portion **22a** and above mounting holes **28**. Without this floor portion, the pivot pin **18** would not be mounted to the bracket in any way.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### *Specification*

The disclosure is objected to because of the following informalities:

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Page 3:

In lines 31-34, it is disclosed how the pivot pin is mounted to the bracket. However, there is no disclosure or any showing of a bracket structure for retaining the pivot pin 18, nor any structure that would provide the disclosed biasing force against the spring 26.

Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

**Claims 5-10 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by  
Marshall et al. (U.S. Patent No. 6,843,468).**

See the Abstract (last sentence); Figures 1, 4, and 10-13; and column 4 (lines 5-60).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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**Claims 5-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over the LEND-A-HAND Installation Instructions (LAH) in view of Pleiss (U.S. Patent No. 1,796,344).**

Claim 5: LAH teaches a method for installing a foldaway hand rail to a surface of a vehicle by temporarily assembling a hand rail to upper and lower brackets (step 1), marking/drilling holes for the upper and lower brackets and mounting the brackets to the surface of the vehicle (step 2), and attaching the hand rail to the brackets (step 3).

LAH fails to teach assembling the hand rail to the brackets such that the hand rail is selectively positionable in first and second positions, and mounting the brackets to the vehicle after the hand rail is so attached.

Pleiss teaches a rack having a plurality of rails 4 and a bracket 1. As disclosed on page 1, lines 46-52, the rails are assembled within the bracket such that the rails are selectively positionable in at least first and second positions (see Figures 2 and 3). The assembled rack is then mounted to a surface by passing screws through mounting apertures formed in laterally extending ears 2 of the bracket 1 and into the surface (see Figure 1 and page 1, lines 70-73).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have positioned the mounting apertures of LAH in the laterally extending flanges rather than behind the pivot pin, as taught by Pleiss, to provide the ability to pre-assemble the hand rail with the brackets and secure the assembled unit to the vehicle surface.

Claim 6: As shown in the Figures of LAH, and noted with the explanation "(For TRAVEL POSITION, lift rail and rotate [i.e. pivot] against vehicle wall into secondary recess.)," the hand rail is selectively pivotable between first and second positions.

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Claim 7: As shown in the Figures of LAH, there are two brackets provided: an upper bracket and a lower bracket.

Claim 8: As shown in the middle Figure of LAH, the hand rail is assembled to the brackets with a pivot pin extending through each end of the hand rail into a respective bracket.

Claim 9: With the mounting apertures being positioned in the laterally extending flanges of the bracket (as taught by Pleiss and explained above), the mounting apertures are offset from the pivot pin.

Claim 10: As shown in the bottom Figure of LAH, the brackets each include a receiving portion offset toward the left side of the brackets (as shown in that Figure, the handrail is positioned within those receiving portions in the TRAVEL POSITION). With the mounting apertures being positioned in the laterally extending flanges of the bracket (as taught by Pleiss and explained above), the mounting aperture formed through the right side flange would be offset to the opposite side of the receiving portions.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David P. Bryant whose telephone number is (571) 272-4526. The examiner can normally be reached on Monday-Thursday (6:30-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Vo can be reached on (571) 272-4690. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



David P. Bryant  
Primary Examiner  
Art Unit 3726

dpb  
4/13/05